

**\* \* § 362 INFORMATION COVER SHEET \* \***

DEBTOR

Case No:

MOTION #:

MOVANT

CHAPTER:

**Certification of Attempt to Resolve the Matter Without Court Action:**  
*Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: \_\_\_\_\_

NOTICE SERVED ON: Debtor(s) \_\_\_\_\_; Debtor's counsel \_\_\_\_\_; Trustee \_\_\_\_\_;

DATE OF SERVICE: \_\_\_\_\_

**MOVING PARTY'S CONTENTIONS:**

The EXTENT and PRIORITY of LIENS:

1st

2nd

3rd

4th

Other:

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:

**DEBTOR'S CONTENTIONS:**

The EXTENT and PRIORITY of LIENS:

1st

2nd

3rd

4th

Other:

Total Encumbrances:

APPRAISAL of OPINION as to VALUE:

**TERMS of MOVANT'S CONTRACT  
with the DEBTOR(S)::**

Amount of Note:

Interest Rate:

Duration:

Payment per Month:

Date of Default:

Amount in Arrears:

Date of Notice of Default:

SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

**DEBTOR'S OFFER of "ADEQUATE  
PROTECTION"for MOVANT :**

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SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

SIGNATURE: \_\_\_\_\_

Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
Bryan A. Lindsey, Esq.  
Nevada Bar No. 10662  
Schwartz Law Firm, Inc.  
626 S. Third Street  
Las Vegas, Nevada 89101  
Telephone: (702) 385-5544  
Facsimile: (702) 385-2741  
Attorneys for the Debtors

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re: ) Case No. 09-26633-BAM  
 )  
Anthony V. Mosley, ) Chapter 11  
 )  
 ) Date of Hearing: March 2, 2010  
Debtor. ) Time of Hearing: 9:00 a.m.  
 )

**DEBTOR'S OPPOSITION TO THE MOTION FOR RELIEF FROM  
AUTOMATIC STAY FILED BY WELLS FARGO BANK, N.A.  
AND COUNTERMOTION FOR ATTORNEYS' FEES**

Anthony V. Mosley, the debtor in the above-captioned proceeding (the “**Debtor**”), files this Opposition (the “**Opposition**”) to Wells Fargo Bank, N.A. (the “**Secured Creditor**”) Motion for Relief from Automatic Stay (the “**Motion**”) and Countermotion (the “**Countermotion**”) for attorney’s fees and in support of the Opposition and Countermotion, states as follows:

## FACTS AND ARGUMENT

1. On September 4, 2009, the Debtor filed his petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et al.* as amended (the “**Bankruptcy Code**”).

2. The Secured Creditor filed its Motion on January 25, 2010, to foreclose on one of the Debtor's residential properties located at 5925 Jerry Drive, Las Vegas, Nevada 89108 (the "Property").

3. On October 23, 2009, this Court granted the Debtor's motion to value collateral (the "**Motion to Value**") and entered an Order valuing the Property at \$63,000.00. Since that date, the Debtor made mortgage payments based upon this new value in the amount of \$416.42. Copies of the mortgage payments from October 2009 – January 2010 are attached hereto as

## Exhibit A.

4. The Secured Creditor seeks to obtain relief from the automatic stay but has offered no basis as to why the automatic stay should be lifted. Indeed, the Secured Creditor's pleading appears to be a form, which was filed as a matter of procedure, not based on the facts of this case.

5. Separately, confirmation of the Debtor's Plan of Reorganization is scheduled for March 16, 2010. Perhaps the Secured Creditor's concerns would be better addressed at confirmation.

## COUNTERMOTION FOR ATTORNEY'S FEES

6. The Debtor filed the Motion to Value and is current on his post-petition mortgage payments on the Property. The Motion to Value was approved by the Court on October 23, 2009.

7. Despite the fact that the Debtor is current on his post-petition mortgage payments, the Secured Creditor filed its Motion for Relief From Automatic Stay.

1       8.     Therefore, the Debtor requests that the Secured Creditor be directed to reimburse  
2 the Debtor for the attorney's fees related to forcing the Debtor to bear the costs related to  
3 opposing the Secured Creditor's Motion and for having to appear at the hearing.  
4

5       WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) denying  
6 the Motion; (ii) awarding the Debtor his attorney's fees for having to respond to the Secured  
7 Creditor's Motion and for having to appear at the hearing; and (iii) granting such other and  
8 further relief as is just and proper.  
9

10      Dated this 18th day of February, 2010.  
11

12      /s/Samuel A. Schwartz  
13      Samuel A. Schwartz, Esq.  
14      Nevada Bar No. 10985  
15      Bryan A. Lindsey, Esq.  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on February 16, 2010, via the Electronic Court Filing System, to the following:

MICHAEL R. BROOKS on behalf of Creditor WASHINGTON FEDERAL SAVINGS  
jsallade@brooksbauder.com

MICHAEL W. CHEN on behalf of Creditor U.S. Bank National Association, as Trustee for BNC Mortgage Loan Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 c/o Chase Home Finance, LLC  
yvette@ccfirm.com

EDWARD M. McDONALD on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11  
edward.m.mcdonald@usdoj.gov

KRISTIN A. SCHULER-HINTZ on behalf of Creditor U.S. Bank, N.A. as Trustee Home Equity Asset Trust 2005-8, Select Portfolio Servicing  
nvbkcourt@mccarthyholthus.com, bknotice@mccarthyholthus.com

CINDY LEE STOCK on behalf of Creditor EMC MORTGAGE COMPANY  
bk-clstock@cox.net

U.S. TRUSTEE - LV - 11  
USTPRegion17.lv.ecf@usdoj.gov

GREGORY L. WILDE on behalf of Creditor BANK OF AMERICA  
bk@wildelaw.com

LES ALLEN ZIEVE on behalf of Creditor Ocwen Loan Servicing, LLC  
isimpkins@zievelaw.com

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent on February 16, 2010 via Regular Mail, to the following:

AMERICAN HOME MORTGAGE SERVICING, INC.  
4875 BELFORT ROAD SUITE 130  
JACKSONVILLE, FL 32256

1 BAC Home Loans Servicing, LP  
2 c/o Prober & Raphael  
3 20750 Ventura Blvd.  
4 Suite 100  
5 Woodland Hills, CA 91364

6 RECOVERY MANAGEMENT SYSTEMS CORPORATION  
7 25 S.E. SECOND AVENUE  
8 INGRAHAM BUILDING, SUITE 1120  
9 MIAMI, FL 33131-1605

10 JOHN D SCHLITTER on behalf of Creditor Litton Loan Servicing  
11 1544 OLD ALABAMA RD  
12 ROSWELL, GA 30076

13 /s/ Bryan A. Lindsey  
14 Bryan A. Lindsey